

Saln Dass Vs. Naraln Singh

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Court : Himachal Pradesh

Decided On : Nov-05-1976

Reported in : AIR1977HP64

Judge : R.S. Pathak, C.J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 16, Rule 1

Appeal No. : Civil Revn. No. 47 of 1976

Appellant : Saln Dass

Respondent : Naraln Singh

Advocate for Def. : P.N. Nag, Adv.

Advocate for Pet/Ap. : O.P. Sharma, Adv.

Disposition : Revision allowed

Judgement :

ORDER

R.S. Pathak, C.J.

1. This is a plaintiff's revision petition against an order of the learned Subordinate Judge, Dharamsala dismissing his application for permission to examine a witness during the trial of the suit.

2. The plaintiff filed a pre-emption suit On April 2, 1976 the plaintiff examined two witnesses. These witnesses were those whose names were on the list. Subsequently, on May 28, 1976 the plaintiff applied to the trial court for examining one Chuni Lal, That application was rejected by the learned Subordinate Judge, Dharamsala by his order dated June 5, 1976 on the ground that his name was not included in the list of witnesses filed earlier by the plaintiff. The plaintiff now applies in revision.

3. The learned Subordinate Judge relied on Order 16, Rule 1 of the Code of Civil Procedure, which provides:

'At any time after the suit is instituted, the parties may obtain, on application to the Court or to such officer as it appoints in this behalf, summonses to persons whose attendance is required either to give evidence or to produce documents:

Provided that no party who has begun to call his witnesses shall be entitled to obtain process to enforce the attendance of any witness against whom process has not previously issued, or to produce any witness not named in a list, which must be filed in Court on or before the date on which the hearing of evidence on his behalf commences and before the actual commencement of the hearing of such evidence, without an order of the Court made in writing and stating the reasons therefor.'

On a true understanding of the proviso to Order 16, Rule 1, it is apparent that while a party is not entitled as of right to produce a witness not mentioned in the list filed by him, it is open to the court to entertain an application by such party and consider whether for good reason the witness should not be allowed to be produced. If it decides to allow the party to produce the witness it must pass a written order stating the reasons for its decision, A power has been vested in the court, and that power must be exercised in accordance with sound judicial principle. The court must consider whether the testimony of the witness sought to be produced is material to, and would assist in, the decision of the suit and also whether allowing the witness to be produced without his name being entered in the list of witnesses already filed would prejudice the rival party on that account (see: *Mian Karim Bakhsh v. Firm Thakar Dass Ram Lal*, AIR 1941 Lah 38),

4. In the present case, the petitioner has in his application stated that Chuni Lal was the owner of the land in suit and was a material witness for deposing to the creation of the tenancy and the receipt of rent. He has also stated that the omission to include the name of Chuni Lal in the list of witnesses was inadvertent. The learned Subordinate Judge, has dismissed the application on the ground merely that the omission of the name by inadvertence was no reason at all. He should have applied his mind also to the other considerations mentioned above, and then passed an appropriate order disposing of the application. In my opinion, he has committed a material irregularity in the exercise of his jurisdiction. The impugned order must, therefore, be set aside.

5. The revision petition is allowed, the order dated June 5, 1976 passed by the learned Subordinate Judge, Dharamsala, is set aside, and the learned Subordinate Judge is directed to dispose of afresh the application for permission to call Chuni Lal as witness. There is no order as to costs,